

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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DONNA DEPNER,

Plaintiff,

Case No. 20-cv-401-pp

v.

ANDREW M. SAUL,

Defendant.

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**ORDER GRANTING PLAINTIFF'S AMENDED MOTION FOR LEAVE TO  
PROCEED WITHOUT PREPAYING THE FILING FEE (DKT. NO. 8)**

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The plaintiff has filed a complaint seeking judicial review of a final administrative decision denying her claim for disability insurance benefits under the Social Security Act. Dkt. No. 1. She also filed a motion for leave to proceed without prepaying the filing fee. Dkt. No. 2. The court ordered the plaintiff to file an amended motion for leave to proceed without prepaying the filing fee. Dkt. No. 5. The plaintiff did not file the amended motion by the deadline the court set, so the court denied the plaintiff's motion and ordered her to pay the full filing fee. Dkt. No. 6. The plaintiff has now filed her amended motion, dkt. no 8, and explained it was not timely filed due to a recently-discovered clerical error on her counsel's part, dkt. no. 7.

To allow the plaintiff to proceed without paying the filing fee, the court first must decide whether the plaintiff can pay the fee; if not, it must determine whether the lawsuit is frivolous. 28 U.S.C. §§1915(a) and 1915(e)(2)(B)(i).

Based on the facts in the plaintiff's affidavit, the court concludes that she does not have the ability to pay the filing fee. The plaintiff indicates that she is not employed, not married, and has no dependents she is responsible for supporting. Dkt. No. 8 at 1. The plaintiff hand wrote a statement that the court cannot read, starting with the words "I do not have money." Id. She indicates that she has no monthly wages or salary and that she receives \$251 per month in food shares. Id. at 2. The plaintiff's monthly rent is \$505 and her other household expenses are \$250. Id. The plaintiff owns a 1997 GMC Jimmy worth approximately \$700, she does not own her home or any other property of value, and she has no cash on hand or in a checking or savings account. Id. at 3-4. The plaintiff indicates that her boyfriend pays her rent and that she uses food share to pay for food. Id. at 4. The plaintiff has demonstrated that she cannot pay the \$350 filing fee and \$50 administrative fee.

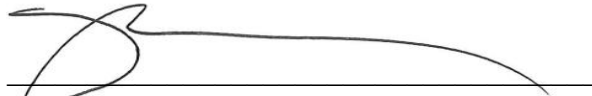
The next step is to determine whether the case is frivolous. A case is frivolous if there is no arguable basis for relief either in law or in fact. Denton v. Hernandez, 504 U.S. 25, 31 (1992) (quoting Nietzke v. Williams, 490 U.S. 319, 325 (1989); Casteel v. Pieschek, 3 F.3d 1050, 1056 (7th Cir. 1993)). A person may obtain district court review of a final decision of the Commissioner of Social Security. 42 U.S.C. §405(g). The district court must uphold the Commissioner's final decision as long as the Commissioner used the correct legal standards and the decision is supported by substantial evidence. See Roddy v. Astrue, 705 F.3d 631, 636 (7th Cir. 2013).

The plaintiff's complaint indicates that she has been denied benefits by the Commissioner, that she is disabled, and that the conclusions and findings of fact by the Commissioner when denying benefits are not supported by substantial evidence and are contrary to law and regulation. Dkt. No. 1 at 1. At this early stage in the case, and based on the information in the plaintiff's complaint, the court concludes that there may be a basis in law or in fact for the plaintiff's appeal of the Commissioner's decision, and that the appeal may have merit, as defined by 28 U.S.C. §1915(e)(2)(B)(i).

The court **GRANTS** the plaintiff's amended motion for leave to proceed without prepaying the filing fee. Dkt. No. 8.

Dated in Milwaukee, Wisconsin this 14th day of May, 2020.

**BY THE COURT:**

A handwritten signature in black ink, appearing to read 'P. Pepper', is written over a horizontal line.

**HON. PAMELA PEPPER**  
**Chief United States District Judge**